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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	

AT&T CORP. REPLY TO OPPOSITIONS TO
RECONSIDERATION OR, IN THE ALTERNATIVE, CLARIFICATION

Pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(g), and the Commission's Public Notice herein published June 8, 1999 (64 Fed. Reg. 30520), AT&T Corp. ("AT&T") replies to the oppositions filed by other parties[1] to its petition requesting the Commission to reconsider or in the alternative to clarify portions of its Second Report and Order in this docket prescribing rules to control and provide remedies for "slamming".[2]

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1 Oppositions to AT&T's petition were filed by the Ameritech Operating Companies ("Ameritech"), GTE Service Corporation ("GTE"), the National Association of State Utility Consumer Advocates ("NASUCA"), the National Telephone Cooperative association ("NTCA"), a coalition of small rural local exchange carriers ("Rural LECs"), SBC Communications, Inc. ("SBC"), Sprint Corporation ("Sprint"), and U S WEST Communications, Inc. ("U S WEST").

2 Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334, released December 23, 1998 ("Second Report and Order").

I. THE COMMISSION SHOULD RESCIND ITS ORDER ABSOLVING SLAMMED CUSTOMERS FROM PAYMENT OF CHARGES

AT&T showed in its Petition (at 4-6) that the absolution remedy prescribed by the Second Report and Order conflicts directly with Section 258 of the Communications Act, which mandates that an unauthorized carrier "shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber" to the unauthorized carrier (emphasis supplied). AT&T further showed (at 8-12) that, in all events, the procedures prescribed for implementing the absolution remedy are inherently inequitable, because they assign responsibility for adjudicating carrier selection disputes to the customer's previously authorized carrier, and because the complex arrangements for liability determination and payments prescribed in the Second Report and Order are likely to prove unworkable in practice. These observations were mirrored in the reconsideration petitions of other parties, including interexchange carriers such as Frontier, Excel, RCN and Sprint and LECs such as GTE, and are again supported in the present round of filings by additional interexchange carriers (Cable & Wireless, MCI WorldCom, Qwest, and the Telecommunications Resellers Association) and by U S WEST.[3]

Only three parties – NASUCA, NTCA, and SBC – oppose AT&T reconsideration petition. All three contend that the Second Report and Order's

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[3] Many of these same arguments were raised in support of MCI's motion to stay the effectiveness of the absolution remedy and related liability determination provisions of the Commission's rules pending appeal, which was granted by the Court of Appeals on May 18. See MCI WorldCom Motion for Stay Pending judicial Review or, in the Alternative, for Expedited Consideration, filed May 10, 1999 in MCI WorldCom, Inc. v. FCC, No. 99-1125 (D.C. Cir); Order, MCI WorldCom, Inc. v. FCC, No. 99-1125 (D.C. Cir. May 18, 1999).

absolution rule is somehow consistent with both the express language of Section 258 and the Congressional intent underlying that statute because under the Commission's scheme any charges that are paid to an unauthorized carrier may eventually be transferred to the customer's preferred carrier.[4] What these parties conveniently ignore is that under the Commission's scheme a customer who claims to have been slammed will generally be relieved of making payment to the unauthorized carrier, and thus that carrier will have no obligation to pay those amounts over to the customer's preferred carrier. This blatant frustration of the purpose and intent of the statute is without any lawful basis, as AT&T showed in its reconsideration petition (at 4-6) and as other petitioners such as Frontier and Sprint confirmed in their own filings.

Additionally, none of the parties that opposes AT&T's request for reconsideration of absolution makes any serious effort to controvert AT&T's showing (at 11-12) that the Commission's prescribed remedy creates an exceptionally powerful, and perverse, incentive for customers to raise baseless slamming claims, or even for customers with legitimate slamming claims to delay reporting those incidents promptly.[5] Moreover, none of these parties rebuts AT&T's demonstration (at 8-12) that the Commission's remedial scheme is so complex as to be unworkable in practice.

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4 See NASUCA at 4; NTCA at 5; SBC at 3-4.

5 NASUCA (at 7) appears to recognize that the Commission's remedy will result in a substantial increase in slamming claims, but argues that this impact should be ignored because "it is in the public interest for those slams to be reported, so that slammer are caught." NASUCA ignores that, because many of the reported

Finally, only SBC (at 5-7) disputes AT&T's showing (at 6-8) that the integrity of the Commission's scheme is fatally compromised because the customer-to-carrier liability determination is performed by the customer's previously authorized carrier, which as every incentive to sustain a slamming claim both to promote customer good will and to obtain the charges for itself. SBC's sole rejoinder to this showing (at 6) is that an alleged slamming carrier can pursue a Section 208 formal complaint against a carrier that it believes has reached an erroneous liability determination. However, AT&T showed in its petition (at 8) that the Section 208 remedy is illusory in light of the large number of disputed carrier changes that will need to be resolved annually.

In sum, the absolution remedy and related liability determination mechanism prescribed in the Second Report and Order is both impermissible as a matter of law and fatally flawed as a matter of policy, and those provisions should be promptly rescinded.

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slamming claims stimulated by the Commission's absolution remedy will lack any factual basis, those reports will not result in apprehension of slammers.

II. THE COMMISION SHOULD RECONSIDER ITS ORDER TO ASSURE THAT PREFERRED CARRIER FREEZES DO NOT IMPEDE COMPETITION

AT&T demonstrated in its reconsideration petition (at 13-20) that the Second Report and Order unduly and unnecessarily restricted the ability of customers to conveniently implement carrier freeze changes because it declined to require LECs to accept subscriber-authorized freeze changes directly from submitting carriers that have performed independent third-party verification of those orders, or to provide automated means to process customer-submitted freeze change directives. AT&T also showed (at 20-23) that the Second Report and Order's failure to require LECs to provide other carriers with lists of frozen customers will substantially impede efforts by the latter carriers to market to customers with preferred carrier freezes, and thus will seriously distort the competitive marketplace.

Predictably, the sole opposition to AT&T's reconsideration petition comes from LECs who are the very beneficiaries of the unwarranted competitive advantages conferred by the Second Report and Order.[6] These parties assert that the relief AT&T seeks would "effectively gut" (Ameritech at 2), "thoroughly undermine" (Rural LECs at 2), or "eviscerate" (id.) the efficacy of the carrier selection freeze mechanism as a protection against slamming. But none of these opponents even addresses AT&T's showing that the Second Report and Order (¶ 125) itself required the LECs to perform third-party verification of preferred carrier solicitations by those carriers and customers' requests directly those carriers for application of freezes to their accounts. These parties make no showing that this same procedure – which the Commission concluded (id.) would "minimize the risk that unscrupulous carriers

might attempt to imposes preferred carrier freezes without the consent of subscribers" – should be considered any less reliable in the case of freeze orders submitted to LECs by other carriers with independent third-party verification of the customers' authorization.

Similarly, some opponents of AT&T's petition assert that it would be infeasible for LECs to implement automated means for customers to apply or remove preferred carrier freezes. See SBC at 10; Rural LECs at 4. These assertions are directly contradicted by Ameritech, which admits (at 1-2) that verification of such changes using a voice response unit ("VRU"), with appropriate identification of the authorizing customer (such as a social security number or other information) "ought to sufficiently ensure the integrity of {preferred carrier] protection instructions . . . ." Even apart from Ameritech's concession, however, it is apparent there are no insuperable barriers to implementing automated means for customers to apply or change carrier freeze orders, as state regulatory bodies have already recognized. Specifically, just this past May the Massachusetts Department of Telecommunications and Energy ("DTE") directed Bell Atlantic to design and develop a secure Web page to allow customers to establish or remove preferred carrier freeze orders.[7] Similarly, last December the New York Public Service Commission ("NYPSC") directed Bell Atlantic to implement an interactive response system for imposing or lifting preferred carrier freezes on any or all telephone lines

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6 See Ameritech at 2- 4; GTE at 6-8; Rural LECs at 2-5; SBC at 7-10; U S WEST at 9-12.

7 See Order in Complaint and request for relief of Tel Save, Inc. against New England Telephone and Telegraph Co., D.T.E. 98-59 (Mass. DTE, May 21, 1999)(attached to this Reply as Exhibit A).

billed to a customer's account.[8] These regulatory decisions belie the opponents 'claim here that requiring the LECs to adopt automated means of processing customers' carrier freeze orders is problematic.

Finally, the Rural LECs (at 5) and US WEST (at 10) oppose AT&T's request that LECs be compelled to provide other carriers identification of customers with carrier freezes to facilitate marketing to those accounts. While it is demonstrably incorrect,[9] the Rural LECs' claim that there is no evidence that LECs have used such information "for anti-competitive purposes" is also beside the point: AT&T's petition is addressed to the patent unfairness of limiting access to such information to LECs, thus impeding other carriers ability effectively to market their services to customers (often, as in the case of intraLATA services, in competition with the LECs). SBC's objection that requiring the provision of this information to other carriers "would involve additional cost to th[e] LECs": is even more meritless: AT&T has never objected to paying reasonable, cost-based charges for provision of such data.

Accordingly, the Commission should reconsider these aspects of the Second Report and Order and adopt the additional measures proposed by AT&T to assure that LEC control of carrier freezes does not continue to inhibit robust competition in existing and newly-opened communications markets.

III. THE COMMISSION SHOULD CLARIFY, OR ALTERNATIVELY

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8 See Order Adopting New York Telephone company's IntraLATA Freeze Plan with Modifications, Case No. 28425 et al. (NYPSC, Dec. 23, 1998)(attached to this Reply as Exhibit B).

9 See Second Report and Order at n. 360 (citing state regulatory decisions finding LEC abuse of carrier freezes).

RECONSIDER AND FIND, THAT THE SECOND REPORT AND ORDER'S REQUIREMENTS APPLY TO BOTH NEW AND CHANGED CARRIER SELECTIONS

Finally, Ameritech (at 4-8), GTE (at 4-5), and Sprint (at 8) all oppose AT&T's request (Pet. at 23-25) to reconsider, or alternatively clarify, the Second Report and Order to specify that the Commission's carrier selection rules and procedures will apply to carrier selections for newly-installed lines, as well as to carrier changes on existing lines. Not surprisingly, the LECs assert that there is no possibility in these circumstances that end users could become subscribed to an intraLATA or long distance carrier that they do not desire.[10]

None of these LECs even acknowledges, much less offers any rebuttal to, the Second Report and Order's conclusion (¶¶ 62-68) that the potential for abuse on calls to LECs initiated by customers (such as those through which new services is initiated) is sufficiently substantial to justify requiring verification of preferred carrier changes to a LEC (or its affiliate's) intraLATA and long distance services on an existing line.[11] Nor do these LECs make any effort to deny that, as AT&T showed in

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[10] See Ameritech at 6 ("Quite obviously, slamming is impossible in these circumstances); Sprint at 8 ("As a logical matter, a customer that is installing new service or adding new lines to its existing service cannot be slammed"). Ameritech and GTE also assert that the Commission is precluded from adopting the relief requested by AT&T because Section 258 of the Communications Act applies only to changes in customers' preferred carrier. These LECs conveniently ignore that the Second Report and Order (¶252) also based its rulemaking on Sections 201 and 202 of the Communications Act, which provide ample authority for the Commission's application of verification and other carrier selection requirements to newly-installed lines.

[11] As the Telecommunications Resellers Association ("TRA") correctly points out (at 8), "An initial carrier selection is nothing more than an in-bound call placed to a local exchange carrier . . . ."

its petition (at 24-25), the economic incentives for LECs to overreach customers establishing new service are just as substantial.[12]

As Sprint (at 8) correctly points out, the long term solution to this serious potential for LEC bias and abuse is to replace those carriers with a neutral third party ("NTP") administrator of the carrier selection process. In response to the Second Report and Order's request (¶¶ 182-84) for comment on that issue, AT&T has submitted a detailed plan for adoption of a technically feasible, cost-effective NTP system.[13] Pending the implementation of that solution, however, the Commission is not merely justified in granting the relief as to newly-installed lines requested in AT&T petition; it is apparent that failure to do so would leave large numbers of customers exposed to unacceptable risks that their intended carrier selections will be frustrated by the LECs. Accordingly, the Commission should clarify that its decision and implementing regulations apply both to preferred carrier selection changes and to the initial selection of a preferred carrier or, alternatively, should reconsider the Second Report and Order to the extent necessary to apply the decision and rules to both carrier selections.

CONCLUSION

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12 The Second Report and Order disposes of GTE's argument (at 5) that there is "no supporting evidence to indicate that slamming has been a problem in the initial carrier selection process." As the Commission stated (¶ 65): "Our experience with slamming carriers demonstrate the vital importance of foreclosing potential sources of fraud before they become a major source of consumer complaints" (emphasis supplied).

13 See AT&T Comments on the December 23, 1998 Further Notice of Proposed Rulemaking, filed March 18, 1999, at 2-30 and Appendix; AT&T Reply Comments on the December 23, 1998 Further Notice of Proposed Rulemaking, filed May 3, 1999, at 3-18.

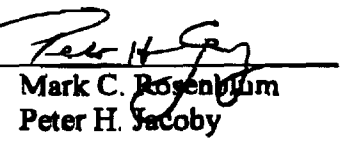
customers exposed to unacceptable risks that their intended carrier selections will be frustrated by the LECs. Accordingly, the Commission should clarify that its decision and implementing regulations apply both to preferred carrier selection changes and to the initial selection of a preferred carrier or, alternatively, should reconsider the Second Report and Order to the extent necessary to apply the decision and rules to both carrier selections.

CONCLUSION

For the reasons stated above and in AT&T's reconsideration petition, the Commission should reconsider and modify, or in the alternative clarify, its Second Report and Order as requested in AT&T's petition for reconsideration.

Respectfully submitted,

AT&T Corp.

By 

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July 8, 1999

EXHIBIT A

The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 98-59 May 21, 1999

Complaint and request for relief of Tel Save, Inc. against New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Massachusetts, for alleged violation of Section 201(b) and 202 of the Communications Act of 1934, as amended, and alleged violation of M.G.L. Chapter 159, §§ 16 and 17.

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ORDER

I. INTRODUCTION

On June 15, 1998, Tel-Save, Inc. ("TSI") filed a complaint ("Complaint") against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic") with the Massachusetts Department of Telecommunications and Energy ("Department") alleging that Bell Atlantic is engaging in unjust and unreasonable practices by refusing to accept subscriber-originated electronically mailed requests to lift primary interexchange carrier ("PIC") freezes (Complaint at 2). A PIC freeze restricts access to a customer's account by preventing the use of a PIC change request without additional authorization from the customer (id. at 2 n.1). Bell Atlantic filed its answer ("Answer") on July 1, 1998 contending its practice of not accepting electronically mailed requests to lift PIC freezes is reasonable in light of the prevalence of "slamming"[1] and an on-going Federal Communications Commission ("FCC") investigation of current PIC change techniques (Answer at 4). See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129, FCC 98-334 (December 23, 1998) ("Second Report and Order"). Currently, Bell Atlantic processes requests to lift the PIC freeze by (1) a three-way telephone call with Bell Atlantic, the customer and the new carrier; (2) a telephone request initiated by the customer; or (3) a written instruction letter initiated by the customer (Answer at 3).

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[1] Slamming occurs "when a company changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization." Second Report and Order at ¶ 1.

II. PROCEDURAL HISTORY

On August 6, 1998, the Department conducted a public hearing and a procedural conference on the above-captioned matter at its offices in Boston, Massachusetts, at which time an evidentiary hearing was tentatively scheduled for October 8, 1998, if a party filed a written request for such hearing with the Department.[2]

On September 14, 1998, TSI filed its written request for evidentiary hearing ("Request"). In response to this Request, on September 21, 1998, Bell Atlantic filed (1) a Motion to Defer further investigation and decision ("Motion to Defer") in this proceeding pending promulgation of regulations by the FCC, and (2) a Motion for Stay ("Motion to Stay") for this proceeding and the evidentiary hearing, pending a ruling on the Motion to Defer (Motion to Defer at 1). On October 7, 1998, TSI filed its Opposition to the Motion for Stay and to the Motion to Defer. On October 22, 1998, the Department granted TSI's Request for an evidentiary hearing, granted Bell Atlantic's Motion to Stay pending resolution of its Motion to Defer, denied the Motion to Defer and set a new procedural schedule. On November 17, 1998, the Department conducted evidentiary hearings on the docket. On December 10, 1998, Massachusetts' new state legislation protecting consumers from slamming, the "Anti-Slamming Law" went into effect.[3] On December 23, 1998, the FCC released

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[2] Petitions for Intervention were granted during the public hearing to MCI Telecommunications Corporation, now MCI WorldCom ("MCI"), AT&T Communications of New England, Inc. ("AT&T"), Telecommunications Resellers Association ("TRA"), MediaOne Telecommunications of Massachusetts, Inc. ("MediaOne"), and Sprint Communications Company, L.P. ("Sprint"). The Attorney General for the Commonwealth of Massachusetts ("Attorney General") filed a notice of intervention on August 3, 1998.

[3] The Anti-Slamming Law is codified as "An act protecting consumers from the unauthorized (continued...)

new regulations intended to deter slamming (Second Report and Order); included in these regulations was a discussion about procedures used to lift PIC freezes (id. at ¶ 127). On January 6, 1999, the parties submitted initial briefs, and on January 20, 1999, the parties filed their reply briefs.

III. STANDARD OF REVIEW

The Department's standard to determine whether to grant or deny TSI's Petition must be considered against the backdrop of federal and state statutes and regulations on slamming and common carriers.

Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the 1996 Act")[4] and codified as 47 U.S.C. § 258, prohibits a telecommunications carrier from changing a subscriber's carrier selection except as prescribed by the FCC.[5] Section 258, however, does not address the particular process known as lifting the PIC freeze.[6]

On December 23, 1998, the FCC released new rules and regulations implementing Section 258 of the 1996 Act which are designed to deter the practice of slamming. Second Report and

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[3](...continued)
switching of their local and long distance telecommunications service providers," Ch. 327 of the Acts of 1998, codified as G.L. c. 93, §§ 108-113.

[4] The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[5] SEC. 258. [47 U.S.C. 258] ILLEGAL CHANGES IN SUBSCRIBER CARRIER SELECTIONS.

(a) PROHIBITION.--No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.

[6] In 1997, the FCC promulgated regulations regarding verification orders for long distance service and the form and content of letters of agency in 47 C.F.R. 1100 and 47 C.F.R. 1150.

Order. These regulations address various procedures used to lift PIC freezes, with the approach that carriers must give its subscribers "a simple, easily understandable, but secure, way of lifting preferred carrier freezes in a timely manner." Second Report and Order at ¶ 127. The FCC specifically endorsed three procedures to lift a PIC freeze: (1) a subscriber's written and signed authorization stating the intent to lift the PIC freeze ("letter of agency"); (2) a subscriber's oral authorization to remove the PIC freeze; and (3) a three-way conference call involving the submitting carrier, the subscriber, and the local exchange carrier ("LEC"). Second Report and Order at ¶¶ 128-129.

Significant to the instant docket, the FCC decided that the list of practices is to be a "baseline standard" and not an exclusive list of practices:

> We decline to enumerate all acceptable procedures for lifting preferred carrier freezes. Rather, we encourage parties to develop new means of accurately confirming a subscriber's identity and intent to lift a preferred carrier freeze, in addition to offering written and oral authorization to lift preferred carrier freezes. Other methods should be secure, yet impose only the minimum burdens necessary on subscribers who wish to lift a preferred carrier freeze.

Second Report and Order at ¶ 130.

Massachusetts General Law c. 159 § 16 authorizes the Department to require a common carrier to adopt certain corrective practices if the Department determines that the practices of a common carrier are unjust, unreasonable, improper, or inadequate. Massachusetts General Law c. 93, §§ 108-113, the new "Anti-Slamming Law," addresses the proper procedures for changing one's primary interexchange carrier ("IXC") or local exchange carrier ("LEC") but does not specifically address the proper procedures used to lift PIC freezes.

IV. POSITION OF THE PARTIES

A. Bell Atlantic

Bell Atlantic opposes TSI's proposal to either allow customers to lift PIC freezes via e-mail requests or allow TSI to forward such requests, due to serious security and privacy concerns raised by this approach (Brief of Bell Atlantic at 1-2). Bell Atlantic states that those same concerns were recognized by the FCC in its recent order on rules for carrier changes (id. at 2, citing Second Report and Order).

Bell Atlantic states that once a customer's line is frozen, that customer can make a PIC change by notifying Bell Atlantic either by letter, orally, or via a three-way conference call among the customer, Bell Atlantic, and the new carrier (id. at 5). Bell Atlantic claims that these procedures, which have been in place since 1992, provide a consumer safeguard by ensuring that no PIC freeze is removed without the customers's express knowledge and consent (id.). Bell Atlantic states that both residential and business customers have ample opportunities to contact Bell Atlantic offices to remove a PIC freeze (id.). Bell Atlantic further states that it offers extended office hours on Saturdays for residential customers convenience, and that response time by Bell Atlantic customer service representatives is relatively short (id. at 5-6). Bell Atlantic also notes that no other state has adopted e-mail as a viable method of lifting PIC freezes (id. at 6).

Bell Atlantic argues that FCC verification rules for carriers who receive calls requesting a carrier change request are similar to current Massachusetts verification rules (id. at 7). Bell Atlantic states that the FCC has declined to identify additional acceptable procedures for lifting PIC freezes, and, although it did not preclude state commissions from doing so, the FCC required that, if other

methods were adopted, they be simple, understandable, and secure (id. at 8, citing Second Report and Order, at ¶¶ 127, 130, 132). Bell Atlantic contends that the FCC also cautioned carriers against using the Internet as a means of initiating carrier changes, including the placing and lifting of PIC freezes, because of the need for verification, which is not satisfied by electronic signatures. (id. citing Second Report and Order at ¶ 171).

Bell Atlantic contends that TSI's complaint must be dismissed because it fails to demonstrate a need for adopting an e-mail method for lifting PIC freezes (id.). Bell Atlantic argues that TSI is indifferent to the security risks, such as verification and authentication, that an e-mail solution would pose (id. at 9). Bell Atlantic asserts that the Department should uphold Bell Atlantic's existing methods of lifting PIC freezes as reasonable, appropriate, and sufficient to meet customer needs, until the FCC completes its investigation and determines parameters for making carrier changes via the Internet (id.). Bell Atlantic argues that it would be premature for the Department to require Bell Atlantic to implement any computer-based method to remove PIC freezes (id.).

Bell Atlantic argues that e-mail messages cannot be automatically processed, even with a message embedded in the form (id. at 10). Because human intervention is required to read and process such messages, Bell Atlantic argues there are no efficiencies in implementing an e-mail method (id.). Bell Atlantic also claims that using e-mail to lift PIC freezes could expose it to high volumes of requests for changes sent to it during promotions, which would further slow down processing time (id.). For these reasons, Bell Atlantic argues that an e-mail method is not as efficient as a telephone call (id. at 11).

Addressing security, public policy, and customer privacy issues, Bell Atlantic argues that

e-mail messaging, as proposed by TSI, does not provide for the sender/customer authentication necessary to ensure that customers with frozen PICs are not "unfrozen," and then changed to other carriers by unauthorized parties (id.). Bell Atlantic claims that authentication is not possible unless both the sender and recipient use the same secure e-mail system (id. at 11-12). Bell Atlantic argues that, because of this flaw, it could be subject to repudiation by carriers or customers denying that they intended to lift a PIC freeze or change a PIC (id. at 12).

Bell Atlantic states that once a customer provides sensitive information, such as a social security number, as proposed under TSI's verification plan, that information may later be misused to generate e-mail requests to lift PIC freezes or slam a customer (id.). Bell Atlantic argues that the only reliable way to determine if a customer generated an e-mail message is for the Company to contact the customer, which then undermines the efficiency of TSI's streamlined e-mail method approach (id.).

Bell Atlantic argues that because e-mail would travel through external Internet networks, TSI's unsecured e-mail proposal would expose customers to tampering activities such as interception, copying, and alteration by someone other than the customer (id. at 12-13). Bell Atlantic contends that although there are various data encryption protocols available which would provide a very high level of customer security by scrambling e-mail data, customers would have to use a standardized protocol that is compatible with the Company's systems (id. at 13). In addition, Bell Atlantic states that different types of e-mail programs may also be required (id. at 14). Bell Atlantic claims that these complexities would be eliminated under a secure website approach, thereby enabling customers to access the Bell Atlantic website directly or via a link from their

carrier's website (id. at 14-15). Bell Atlantic, however, argues that it would be unreasonable for the Department, at this time, to force the Company to design and implement an electronic method that may not comply with the technical specifications or other rules promulgated at the federal level (id. at 14).

B. TSI

TSI argues that Bell Atlantic's refusal to accept e-mailed requests to lift PIC freezes is unjust, unreasonable, improper, and inadequate, and requests that the Department issue an order requiring Bell Atlantic to accept e-mailed requests (Brief of TSI at 1). TSI states that no current federal or state rule prohibits Bell Atlantic from accepting e-mail requests to lift PIC freezes (id. at 10, quoting Bell Atlantic's Gonzalez-Perez, 11/17/98 Tr. at 133), and that the FCC has actually encouraged the development of additional means to lift PIC freezes (id.).

TSI argues that e-mail offers a more convenient alternative than the inadequate and unreasonably restrictive methods currently offered by Bell Atlantic to its customers (id. at 12). TSI argues that because it advertises extensively over America On Line ("AOL") and Compuserve, many customers switching to TSI's service are responding to on-line advertisements, and those customers frequently use e-mail to communicate (id.). TSI states that once it receives a new order from a customer and discovers that the customer has a PIC freeze, TSI sends an e-mail to the customer suggesting that they call Bell Atlantic directly to request a freeze removal so the customer can change her/his PIC. (id.). TSI claims that customers are often unable to contact Bell Atlantic during business hours when representatives are available (id. at 12-13). In addition, TSI states that such telephonic contact gives Bell Atlantic an opportunity to sell its own products and will, when

intraLATA presubscription is implemented, allow Bell Atlantic to question or dissuade a customer's selection, a practice TSI claims is illegal (id. at 13). TSI states that customers can also contact Bell Atlantic by letter, but these requests are not processed until Bell Atlantic confirms the requests by telephone, which TSI also claims is in violation of FCC regulations (id.). TSI states that it attempts to overcome these handicaps by having its representative set up three-way conference calls among the customer, Bell Atlantic, and TSI (id.). However, TSI claims that often there is no answer, an answering machine is reached, or the customer is unable to participate in the conference call at that time (id.). TSI states that the current options for lifting of PIC freezes offered are not cost effective and do not sufficiently realize customers' choices of their long distance carrier (id.). TSI contends that approximately ten percent of TSI's prospective Massachusetts customers do not have their PIC change orders carried out as a result of Bell Atlantic's current policies (id. at 14).

TSI argues that e-mail would "liberate" many of these customers whose choices are currently being frustrated (id. at 14). TSI notes that e-mail can be sent and read anytime, and is communicated almost instantaneously (id.). TSI states that e-mail eliminates the need for all parties involved to be available at the same time, reduces transactional costs involved in a customer's carrier change, and also reduces the possibility for Bell Atlantic to abuse its position as "gatekeeper" in regard to customer contact (id.). TSI also states that the FCC has encouraged the development of additional means for lifting of PIC freezes as long as the subscriber's identity and intent can be accurately confirmed (id.).

TSI states that the use of e-mail to lift PIC freezes is as secure as contact by telephone (id. at 15). TSI anticipates that valid e-mail requests, as with those made via telephone, will contain

customer-specific verifying information such as the subscriber's social security number, date of birth, mother's maiden name, or other such data necessary to prevent unauthorized lifting of PIC freezes (id.). TSI also states that it believes that e-mail could be formatted to facilitate faster processing by Bell Atlantic (id.). To further enhance security, TSI proposes that, as between AOL and Bell Atlantic, e-mail requests travel via a dedicated line that would significantly reduce the risk of interception (id. at 16). TSI states that, with these procedures in place, e-mail would be even more secure than information sent via telephone or letter (id.).

TSI argues that, even without formatting, e-mail would be no slower than the method by which Bell Atlantic currently receives requests to lift PIC freezes (id. at 16-17). TSI further argues that e-mail, which includes the use of pre-formatted fields, would eliminate handling by a Bell Atlantic representative and would be as fast to process as requests submitted to Bell Atlantic's proposed PIC freeze web page (id. at 17). TSI prefers the e-mail method over a web page because a Bell Atlantic-controlled web page would allow Bell Atlantic to promote its own interests (id.).

TSI states that even if processing an increased volume of e-mail increased Bell Atlantic's costs to some degree, the increased costs are not a valid reason for Bell Atlantic to refuse to provide this service (id. at 18). TSI argues that any increased costs simply reflects the increased rate at which consumers' choices are realized, and that this is a development wholly consistent with the policy goals and mandatory requirements of the Act (id. at 19).

C. Attorney General

The Attorney General states that the FCC adopted rules, on a going forward basis, for all carriers to provide for the nondiscriminatory solicitation, implementation, and lifting of PIC freezes

(Brief of the Attorney General at 3, paraphrasing Second Report and Order at ¶¶ 117-118).

The Attorney General notes that the FCC did not preempt further state efforts to ease the burden on consumers to effectuate a PIC change (id. at 4). The Attorney General claims that the FCC, in addition to requiring LECs to accept the lifting of PIC freezes via written, oral, or three-way conference call, also encouraged parties to develop new secure means of lifting PIC freezes in addition to the above methods (id.).

The Attorney General recommends that the Department allow consumers to e-mail Bell Atlantic directly to implement and lift PIC freezes on their accounts, and states that while Bell Atlantic's present methods are compatible with current FCC requirements, an e-mail option would provide consumers with an efficient and modern means for implementing and lifting PIC freezes (id. at 6). The Attorney General further argues that Bell Atlantic's current PIC freeze procedures are outdated, and that given the pervasive use of e-mail, it makes sense to give consumers the e-mail option to implement and lift PIC freezes (id.). Furthermore, the Attorney General argues that the e-mail option is consistent with the FCC's recommendation that carriers develop new, secure means of confirming a customer's identity and intent to lift PIC freezes (id. at 7).

The Attorney General states that it is aware that e-mail transmissions, which must contain enough authentication information to verify customer identity, must also be secure from being disclosed or tampered with by third parties (id.). In addition, the Attorney General states that if e-mail is allowed to implement and lift PIC freezes, only customers, not carriers, should be authorized to use this method (id.). The Attorney General recommends that the Department require a "standardized secure protocol" that is compatible with existing e-mail systems for the confidential

transfer of e-mail requests to implement or lift a PIC freeze (id. at 8). Finally, the Attorney General states that the authenticating information, contained in the consumer's e-mail, should include the same or similar information that Bell Atlantic requires for the lifting and implementing of PIC freezes via telephone, or written letter (e.g., among other things a customer's full name, birth date, account number) (id.).

V. ANALYSIS AND FINDINGS

It is undisputed that the FCC in its Second Report and Order did not establish an exclusive list of practices for lifting PIC freezes, and left it to the states to establish other means that are at least as secure, effective and simple. See Second Report and Order, at ¶ 130. Thus, the Department has the authority under federal law, as well as state law, to require Bell Atlantic to allow the lifting of PIC freezes by other means not enumerated by the FCC, if the Department determines that (1) Bell Atlantic's current practice is "unjust, unreasonable, improper, or inadequate", (2) an alternative method is reasonable and is consistent with the FCC's rules, (3) and implementing of such alternative method would not be unreasonable in terms of its cost to Bell Atlantic to implement and its impact on Bell Atlantic's ability to provide other services to its customers. See Second Report and Order, at ¶ 130; G.L. c. 159, § 16; Mission Hill, D.P.U. 96-30, at 2-3 (1997), citing New England Telephone and Telegraph Company, D.P.U. 89-300, at 289-290 (1990)).

With respect to the first point, the Department finds that Bell Atlantic's current practice of restricting the lifting of PIC freezes to written or oral authorization is unreasonable. The evidence indicates that existing procedures make it difficult for Bell Atlantic customers to lift PIC freezes and change their long distance carrier (Brief of TSI at 9). Not only can these existing procedures

inconvenience consumers seeking to change carriers, but there also is evidence that competition is being harmed because some consumers are being stymied in their attempts to change carriers (id. at 10).

In contrast, the use of e-mail proposed by TSI is much more convenient. E-mail saves the time and inconvenience of having to write or mail a letter, of having to contact a Bell Atlantic customer service representative to provide oral authorization, or of having to set up a three-way call between the customer, the Bell Atlantic service representative and the long-distance carrier representative. As noted by the Attorney General, e-mail has become an established means of communications in our society, including conducting commercial transactions.

However, unsecured e-mail presents its own problems. Unsecured e-mails would expose customers to tampering activities such as interception, copying, and alteration by someone other than the customer. Moreover, certain customers may be unwilling to include in an unsecured e-mail the type of confidential personal information, such as social security numbers and account information, that is needed by Bell Atlantic to lift PIC freezes. Therefore, we find TSI's unsecured e-mail approach to be unreasonable.

The Attorney General argues that various data encryption protocols exist which would provide a very high level of customer security by scrambling e-mail data, thus providing for the use of secured e-mails. However, as Bell Atlantic points out, for the secured e-mail approach to work, all customers must use a standardized encryption protocol that is compatible with Bell Atlantic's systems. There is simply no way to ensure that all customers would have the same Bell-Atlantic compatible encryption software. For these reasons, we also find the secured e-mail approach to be

unreasonable.

However, a third alternative -- a secure website -- offers the convenience of e-mail, without the logistical problems associated with standardized protocols. With this approach, customers would quickly and securely request PIC freeze lifts by accessing a secure Bell Atlantic Internet website via their web browser software (as opposed to e-mail) (See BA-MA Exh. 1 at 14). Communication via a secure web server is much more convenient than the methods currently allowed by Bell Atlantic. In addition, Bell Atlantic can choose from any number of commonly used secure server products, which will allow the encryption and decryption of customer messages for on-line transmission. The security protocol chosen should be web compatible, such as Secure Sockets Layer ("SSL"), Secure HTTP ("SHTTP"), Private Communications Technology ("PCT") or IP Security ("IPSec"). The Department notes that most web browsers and servers are currently expected to support these popular security protocols. This secure website approach would eliminate the need for customers to use a standardized e-mail protocol, compatible with Bell Atlantic's systems, and is more appropriate and cost effective than using dedicated lines from carriers to Bell Atlantic.

To minimize the risk of slamming, only Bell Atlantic customers, and not carriers, will be allowed to lift a PIC freeze via the secured website approach. In addition, the data supplied via secure web server transmission should contain the same or similar authentication information for verifying customer identify as is required by the other methods of lifting PIC freezes (e.g., the customer's name, birth date, social security number, mother's maiden name, account number, etc.). Therefore, we find that the use of a secure web page by Bell Atlantic for lifting PIC freezes is

reasonable and consistent with the FCC's requirement that new methods be simple, understandable and secure. See Second Report and Order, at ¶¶ 127, 130, 132.[7]

Regarding the cost issue, many secure web server products are in frequent use today by both large and small businesses engaged in electronic commerce ("e-commerce"), and many are very reasonably priced. In addition, the Department is aware that using a secure web server to simply collect personal data is a considerably less complex process than using such technology to process financial transactions. The cost to Bell Atlantic of developing and implementing a secure web page should be minimal. However, if Bell Atlantic can demonstrate otherwise, the Department may consider modifying its findings, including allowing for cost sharing among carriers.

Therefore, we direct Bell Atlantic to design and develop a secure web page for customers to make PIC freeze changes (i.e., either establishing or removing a PIC freeze) within 60 days of this Order.[8] Once developed, Bell Atlantic shall notify in writing all interexchange carriers of the availability of the web page and how to link to it. In addition, Bell Atlantic is required to notify all customers through a bill insert of the availability of the secure web page within 60 days of the date of implementation of the web page. To ensure that Bell Atlantic does not use the web page for any unreasonable marketing advantage, Bell Atlantic shall develop the graphics and text for the web

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[7] We recognize, however, that the FCC is investigating similar issues in a pending case and may make determinations that could affect our findings in this docket.

[8] It is possible that this web page will be useful for other types of customer transactions in the future.

page through a collaborative process with the parties in this case.[9] Bell Atlantic shall also make all necessary changes to its tariffs to reflect the above findings and to file any necessary compliance tariffs within 30 days of this Order. Changes should be made to the tariffs to reflect a customer's ability to implement or remove PIC freezes for both intrastate, interLATA and intraLATA services. In addition, we note that Bell Atlantic intends to file a tariff with the Department later this year to implement a local services freeze (i.e., the equivalent of a PIC freeze for a customer's local exchange service). Without implying whether such a tariff would be reasonable, the Department orders Bell Atlantic to include in that tariff explicit authorization for customers to implement or lift local service freezes via secured web server in the same manner that we have ordered here for PIC freezes.

VI. ORDER

After due notice, hearing and consideration, it is hereby

ORDERED: That the Petition filed by Tel-Save, Inc., is GRANTED as modified herein; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts shall design and develop a special secure web page and bill inserts for customers to make PIC freeze changes, within 60 days of this Order; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic shall make all necessary changes to its tariffs to reflect the above findings and to file any

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[9] If agreement can not be reached, the Department's Telecommunications Division may mediate disputes.